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14/09/2011

O.A. 103/2008

Mr. Amit Mathur, Counsel for applicant.

Mr. B. K. Pareek, Proxy Counsel for

Mr. T. P. Sharma, Counsel for respondents.

Heard.

The O.A. is disposed of by a
separate order on the separate sheets
for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K. S. Rathore]
Member (J)

2008

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 14th day of September, 2011

ORIGINAL APPLICATION No. 103/2008

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

I.K. Bindra son of Shri S.N. Bindra; age around 54 years,
resident of 351, Katewa Nagar, Gurjar Ki Thadi. Presently
working as Stenographer, Atomic Mineral Directorate,
Jaipur.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through Secretary, Department of Atomic Energy, CSM Marg, Mumbai.
2. Director, Atomic Minerals Directorate for Exploration and Research, Department of Atomic Energy, Begumpet, Hyderabad.
3. The Assistant Personnel Officer, Recruitment -III, Personal Division, Bhabha Atomic Research Centre, Department of Atomic Energy, Mumbai.
4. Shri T.A. Menon, Stenographer Grade II, South Centre Region, Atomic Mineral Directorate for Exploration and Research, Begumpet, Hyderabad.

... Respondents

(By Advocate: Mr. B.K.Pareek proxy to Mr. T.P. Sharma)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(1) The original application preferred by the applicant may kindly be allowed and the respondents may be directed to promote the applicant on the post of stenographer grade II from the date he became eligible for promotion on that post. Respondents may further be directed to gave all consequential benefits to the applicant after promoting him.
- (2) The order dated 1 April/May 2007 by which the representation of the applicant has been rejected and the order dated 01.02.2007 by

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which the respondent no. 4 has been promoted may kindly be quashed and set aside.

- (3) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- (4) Cost of the Original application be awarded in favour of the humble applicant.

2. Brief facts of the case are that the applicant was initially appointed as Stenographer on 18.04.1975. In the year 1992, the applicant appeared in the speed test examination. He was declared passed and has been granted two advance increments. The applicant was posted in Jammu & Kashmir. However since his wife was working at Jaipur, he requested for his transfer to Jaipur. The respondent's department transferred the applicant vide order dated 29.11.1992 (Annexure A/2). While transferring the applicant, the respondents allowed all the benefits to the applicant except the seniority. The transfer of the applicant was treated as made in the public interest. The respondents transferred the applicant to Atomic Mineral Division, another constituent unit of the Atomic Mineral Directorate for Exploration and Research, Jaipur. In compliance of this transfer order, the applicant joined at AMD, Jaipur giving undertaking that he accepts all the conditions of his transfer. On passing the speed test examination, the applicant was given two increments. Thus two increments were also transferred and he continue to get the payment by AMD Jaipur for these advance increments for qualifying the examination. The copy of granting two increments dated 16.10.1992 is annexed and

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marked as Annexure A/3. Subsequently, the AMD, Jaipur granted ACP to the applicant in the pay scale of Rs.5500-9000/- vide order dated 17.04.2000 (Annexure A/4). It is further submitted that when the applicant qualified speed test examination at BARC, Mumbai, the respondents empanelled the applicant for promotion to the post of Sr. Stenographer. The copy of the order issued in this regard on 04.08.1992 is annexed and marked as Annexure A/5. After his transfer to AMD, Jaipur, the applicant approached the learned Tribunal for determining his seniority from the date of his initial appointment and grant of promotion to the post of Stenographer II with all consequential benefits keeping in mind that he had already been empanelled to Jaipur prior to his transfer. This OA No. 254/1997 was decided on 17.05.2000, which was dismissed by the learned Tribunal. Aggrieved by the order of this Tribunal, the applicant filed DB Civil Writ Petition No. 5207/2000, which was also dismissed vide order dated 08.12.2000.

3. That the respondents time to time issued the seniority list of Stenographer Grade III in which the date of appointment of the applicant is shown as year 1992, however, he is placed at sr. no. 2 in the aforesaid lists. His date of initial appointment in the Nuclear Laboratory i.e. 18.04.1975 has also been shown in the seniority list. The copy of one such seniority list dated 20.4.2006 is annexed and marked as Annexure A/7.

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4. That the next promotional post from the post of Stenographer III is Stenographer II. It is the post for which the applicant was empanelled way back in the year 1992. Though after his transfer to the AMD, Jaipur, he was assigned the bottom seniority but all other benefits were allowed to him. In the year 2007 when the applicant was in training in Hyderabad, it came to his knowledge that the respondents had promoted respondent no. 4 on the post of Stenographer Grade II though respondent no. 4 is much junior to the applicant. Being aggrieved with the promotion of respondent no. 4, the applicant submitted a representation to the respondents in the month of March, 2007 but the respondent did not consider the claim of the applicant on the post of Stenographer II. The respondents rejected the claim of the applicant for promotion vide impugned order dated 01.05.2007 (Annexure A/1). Aggrieved by the action of the respondents, the applicant has filed this OA.

5. The respondents have filed their reply. The respondents have admitted that the applicant was initially appointed w.e.f. 18.04.1975 in the Nuclear Research Laboratory. He was posted at Srinagar. Subsequently, the unit was transferred from Srinagar to Jammu. The applicant made a request to the respondents to transfer him from Jammu to Jaipur as his wife was working at Jaipur. The respondents agreed to accommodate the applicant subject to the condition that applicant's seniority

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on posting at AMD, Jaipur would ^{be} determined with reference to his date of joining duty in AMD Jaipur. The applicant accepted the condition vide his letter dated 17.11.1992 and he joined his duty at AMD, Jaipur on 14.12.1992.

6. The respondents have further submitted that cadre to which the applicant belong was not a centralized cadre in the department of Atomic Energy (DAE). Bhabha Atomic Research Centre and Atomic Minerals Directorate for Exploration & Research are two separate constituent units of DAE with different sanctioned strength and hence the Stenographers in BARC or AMD are considered for promotion separately based on their continuous service in their respective units and not on the basis of combined service. The applicant had requested to transfer him to AMD, Jaipur on personal grounds and, therefore, the question of reckoning his seniority in Stenographer III would arise only from the date of his joining AMD, with effect from 14.12.1992. Though the applicant was empanelled for the post of Stenographer Grade II in BARC on seniority cum fitness basis in the year 1992, yet he did not get his promotion during his tenure in BARC. Since the applicant joined AMD by foregoing his seniority in BARC and promotion to the post of Steno Grade II is unit specific in the Department, his empanelment for the post of Steno Grade II in BARC cannot be considered for promotion in AMD as the same was not tantamount to deviation from the guidelines stipulated by the DOPT, but

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also adversely affect the promotional avenues of the personnel of his category already serving in AMD, prior to his appointment in AMD. However, the applicant has been given two financial upgradations on completion of 24 years of total service and he is presently a Stenographer Grade II~~I~~ drawing in the pay scale of Rs.5500-9000/- w.e.f. 09.08.1999 vide order dated 17.04.2000 (Annexure R/7), which is the next higher grade than applicable to Steno Grade II.

7. That the applicant initially filed an OA No. 254/1997 before this Bench of the Tribunal seeking directions of the Hon'ble Tribunal to count his service from the date of his initial appointment in BARC for all purposes including determination of seniority and promotion to the post of Steno Grade II with all consequential benefits keeping in view that he had already been empanelled for the post of Stenographer II in BARC prior to his transfer to AMD, Jaipur. The Hon'ble Tribunal dismissed the said OA vide its order dated 17.05.2000 (Annexure R/9).

8. The applicant aggrieved by the order of CAT, Jaipur Bench filed a DB Civil Writ Petition No. 5207/2000 before the Hon'ble High Court of Rajasthan, Jaipur. The Hon'ble High Court vide its order dated 08.12.2000 (Annexure R/10) dismissed the case holding that no interference is called for in the order of the Tribunal.

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9. The applicant thereafter filled a Review Petition No. 91/2001 before the Hon'ble Court. The Hon'ble High Court while dismissing the said Review Petition vide its order dated 31.10.2001 (Annexure R/11) observed that no case has been made out by the applicant for reviewing their own order and held that he may approach the Department for his promotion to the post of Stenographer Grade II and if such representation is made, the Department shall consider the same on merits and pass appropriate orders.

8. That based on the directions given by the Hon'ble High Court, the applicant had submitted his representation dated 08.11.2001 (Annexure R/12) to the Department. The Respondents reviewed the matter carefully considering the facts and circumstances of the case, the DOPT orders on the subject, well reasoned orders passed by the Hon'ble CAT, Jaipur dated 17.05.2000 and that of the Hon'ble High Court of Rajasthan Jaipur dated 08.12.2000 and 31.10.2001 and issued a speaking order dated 17/20.05.2002 (Annexure R/13) rejecting the representation of the applicant dated 08.11.2001.

9. That the applicant on being aggrieved by the speaking orders dated 17/20.05.2002 had filed an OA NO. 337/2002 before the Hon'ble CAT, Jaipur Bench praying for the following reliefs:-

"(a) It is, therefore, prayed that the application filed by the applicant may kindly be allowed and respondents be directed to considering

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applicant for promotion for the post of Stenographer Grade II, keeping in mind that he had already been empanelled prior to his transfer to Jaipur, from the date it is due and be awarded all consequential benefits arising out of it.

- b) Any other benefit which the Hon'ble Tribunal deems proper be ordered to be allowed.
- c) That the impugned order dated 17.05.2002 may kindly be quashed and set aside.
- d) That the entire record of Asha Raina matter may be called."

10. Hon'ble CAT, Jaipur Bench vide its order dated 05.12.2003 (Annexure R/14) dismissed the OA with the following observations:-

".....13. In view of this legal position, the applicant cannot be permitted to rack up this matter once again when no finding has been given in favour of the applicant in respect of his promotion for the post of Stenographer Grade II. It is not permissible for us to entertain this plea once again thereby nullifying the earlier order passed by this Tribunal in OA No. 254/1997, which was subsequently affirmed by the Division Bench of the Hon'ble High Court in DB Civil W.P. No.5207/2000. That apart, we have already held that the applicant cannot be promoted to the post of Stenographer Grade II simply on the basis that he was empanelled in BARC in the year 1992 especially when after an empanelment and before the applicant could be considered for promotion to the post of Stenographer Grade II in BARC he sought transfer to another unit i.e. AMD, Jaipur, which is a separate unit and the promotion has to be made on unit basis. Further this being stale claim of 1992, cannot be entertained at this stage more particularly when the applicant has not filed any application for condonation of delay in terms of Section 21 of the Administrative Tribunal's Act, 1985 and in view of the law laid down by the Apex Court in the case of Ramesh Chand Sharma vs. Udham Singh & Others with State of H.P. vs. Udham Singh & Others, 2000 SCC (L&S) 53. Apart from the fact that claim for promotion as Stenographer Grade II is hit by the principles of res-judicata.

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11. The respondents have further stated that the present OA has no substance as the written examination was conducted for the post of Stenographer Grade II on 15.03.2002, which needs to be filled by the candidates from merit panel. Panel for the post of Stenographer Grade II was, therefore, prepared from the list of candidates who have emerged successful in the written examination conducted on 15.03.2002, which includes Shri T. Anjaneya Menon, Stenographer Grade II. As the post of Stenographer Grade II is vacancy based promotion, Shri Anjaneya Menon was promoted to the post of Stenographer Grade II w.ef. 01.02.2007 (F.N) when the vacancy for the post of arose. It is further submitted that the applicant did not appear for the written examination inspite of an opportunity afforded to him by this Directorate.

12. That the post of Stenographer Grade II was to be filled only from merit panel, it is mandatory to clear written examination for the post of Stenographer Grade II, which was ear-marked under merit panel. Therefore, the respondents have submitted that the present OA has no merit and it may be dismissed with costs.

13. Having heard the rival submission of the parties and after perusal of documents on record, we are of the opinion that there is no ground to interfere with the letter dated 01.05.2007 (Annexure A/1) issued by the

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respondents. In the present OA, the applicant has basically asked for his promotion to the post of Stenographer Grade II from the date he became eligible for promotion on that date. He has also stated in his OA that the he has been empanelled to the post of Senior Stenographer from the date he passed the Speed Test Examination for which he was given two increments. His earlier request in OA No. 337/2002 was quite similar which reads as under:-

- “(a) It is, therefore, prayed that the application filed by the applicant may kindly be allowed and respondents be directed to considering applicant for promotion for the post of Stenographer Grade II, keeping in mind that he had already been empanelled prior to his transfer to Jaipur, from the date it is due and be awarded all consequential benefits arising out of it.
- b) Any other benefit which the Hon’ble Tribunal deems proper be ordered to be allowed.
- c) That the impugned order dated 17.05.2002 may kindly be quashed and set aside.
- d) That the entire record of Asha Raina matter may be called.”

OA No. 337/2002 was decided on 05.12.2003 and it was dismissed not only on the ground of delay but also on the fact that applicant claimed for his promotion as Stenographer Grade II is hit by the principle of res-judicata. Therefore, the present OA is also barred by the principle of res-judicata. However, we are considering the OA on merit also.

14. The applicant has requested in the OA to quash ~~ed~~ the order dated 01.02.2007 by which respondent no. 4 has been promoted but the applicant has not annexed the copy

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of that order alongwith the OA. In the OA, he has not given the date on which, according to him, he became eligible to the post of Stenographer Grade II. It is not disputed that he came on transfer from Jammu to Jaipur on his own request. He accepted the bottom seniority at AMD, Jaipur. Subsequently, he filed OA No. 254/1997 in which he prayed for re-determination of the seniority and grant of promotion to the post of Stenographer Grade II, which was dismissed by this Tribunal vide order dated 17.05.2000 (Annexure R/9). Being aggrieved by this order, the applicant filed a DB Civil Writ Petition No.5207/2000, which was also dismissed by the Hon'ble High Court vide order dated 08.12.2000 (Annexure R/10). Thus the question of seniority has been settled by the court of law, which cannot be re-opened now. As far as his promotion is concerned viz.a.viz promotion of respondent no. 4, T.A. Menon, is concerned, respondents have categorically mentioned that the written examination was conducted for the post of Stenographer Grade II on 15.03.2002 to fill up the post by the candidates from merit panel. The panel for the post of Stenographer Grade II was, therefore, prepared from the list of candidates who were declared successful in the written examination dated 15.03.2002 which includes Shri T. Anjaneya Menon, Stenographer III. As the post of Stenographer Grade II is vacancy based promotion, Shri Anjaneya Menon was promoted to the post of Stenographer Grade II w.e.f. 01.02.2007 (F.N.) when the vacancy for the post arose. They have further stated that

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the applicant did not appear in the written examination inspite of an opportunity afforded to him by this Directorate. The empanelment of the applicant for the post of Stenographer Grade II in BARC cannot be considered for promotion in AMD as they are two separate constituent units of DAE with different sanctioned strength. Therefore Stenographer in BARC or AMD are considered for promotion separately based on their continuous service in their respective units and not on the basis of combined service. Since the applicant was given an opportunity to appear in the examination and he did not avail that opportunity in 2002, therefore, now he cannot agitate the promotion of respondent no. 4, which was based on that examination. Promotion of T.A. Menon has been given on merit quota while the applicant was empanelled for the post of Stenographer against seniority cum fitness quota (Annexure A/5). Respondents in their letter dated 01.05.2007 (Annexure A/1) have clearly stated that Shri I.K. Bindra, applicant, is at sr. no. 2 of the seniority and his case for appointment to the post of Stenographer Grade II on promotion will be considered as & when his turn comes under seniority cum fitness quota. It is further stated that however, if Bindra desires to have promotion under merit quota to the post of Stenographer Grade II, he may appear in the written examination that may be conducted by AMD after exhausting the select panel of Stenographer Grade II in future. Thus we find that there is no infirmity in the letter dated 01.05.2007 (Annexure A/1)

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and there is no reason to interfere with that communication.

15. The present OA has no merit and hence it is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ

K.S. Rathore
(Justice K.S.Rathore)
Member (J)